IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7047 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOKALBHAI BHAVANBHAI BHATTI

Versus

DRIVER OF MATADOOR,GAJENDRASINH DOLUBHA PARMAR

Appearance:

1. First Appeal No. 7047 of 1999

MR SANDEEP N BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1-3

NOTICE SERVED for Respondent No. 3,5

UNSERVED-REFUSED (N) for Respondent No. 4/1

DS AFF.NOT FILED (N) for Respondent No. 4/1

NOTICE SERVED BY DS for Respondent No. 4/2

MR KK NAIR for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/08/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit.

Mr.K.K.Nair waives service for respondents no. 3 and 5.

Respondents no. 1,2 to 4/2, though served, have not filed their appearance.

With the consent of learned advocates, this appeal is finally heard today.

2. The appellant is the original claimant in Motor Accident Claims Petition No. 144 of 1992 which was heard and decided by Motor Accident Claims Tribunal, Morvi and the Tribunal, by its judgment and order dated 22.8.1999, dismissed the petition. The said order is challenged in this appeal under section 173 of the Motor Vehicles Act.

3. In the claim petition, the appellant has averred that an accident occurred on 27.1.1992 when the claimant was proceeding towards his house in a goods rickshaw along with goods after performing marriage ceremony of his daughter. The said rickshaw was driven by respondent no.4 Mansukh Chhagan. It is the case of the claimant that when the said rickshaw reached nearby Sadbhavna Hospital, Nava Dela Road, at that time, at about 7.00 p.m., one tractor was proceeding from front side and the offending Matador was coming from behind in a rash and negligent manner. At that time, offending Matador No. GJ-3-255 tried to overtake the claimant's goods rickshaw, with the result, his left leg was crushed between the Matador and goods rickshaw as he was sitting keeping his leg outside the goods rickshaw. The claimant thereafter went to bonesetter for treatment who applied plaster, but after some days, he felt unbearable and severe pain and, therefore, he was referred to Morvi Hospital and thereafter to Irwin Hospital, Jamnagar. As a result of the said accident, there was severe infection inside the leg and gangrene had developed and, therefore, his left leg had to be amputed by the doctors of Irwin Hospital, Jamnagar. After about two-and-half months, he filed complaint before Morvi City Police Station against the driver of Matador. According to the claimant, at the time of the accident, he used to earn Rs.1000/-per month from the business of pan bidi and he used to do agricultural work and he accordingly claimed an amount of Rs. 2.5 lacs including the amount of expenses for

treatment, conveyance charges, nutritious food, etc. from the respondent.

4. There is no dispute to the fact that so far as both the vehicles are concerned, respondent no.5 Oriental Insurance Co. has filed objections at Ex. 17,18 and 36. Respondent no.4/2 Dinesh Bechar, though had engaged lawyer before the Tribunal, did not file any written statement. Likewise, the respondents no. 1 and 2 also have not filed any written statement. As per the case of respondent no.5 Insurance Company, the claimant had not sustained serious injuries in the accident, but subsequently he had got up the case by obtaining permanent disability certificate. In substance, as per the Insurance Company, there is no nexus between the amputation of leg and the injuries sustained by the claimant. According to the Insurance Company, the entire accident took place due to the sole negligence on the part of the claimant as he was sitting in goods rickshaw keeping his leg outside the rickshaw. The Insurance Company also denied the fact of his monthly income and the claimant having spent huge amount for treatment and, therefore, prayed to dismiss the entire petition with costs.

5. It may be stated that the claimant has examined himself vide Ex. 42 and has also examined Dr. Punit Jani, Orthopaedic Surgeon of Government Hospital, Morvi vide Ex. 63. He has relied upon the statements of Bonesetter and other witnesses which were recorded by police. After appreciating the evidence on record, the Tribunal held that the claimant has failed to prove that the respondents no. 1 and 4 drove the vehicle on the date of the accident in rash and negligent manner, thereby causing injury to the appellant claimant and in that view of the matter, the appellant is not entitled to claim any compensation.

6. We have heard Mr. S.N.Bhatt, learned advocate for the appellant and Mr. K.K.Nair, learned advocate for the respondent no.5 Insurance Company.

7. Learned advocate Mr. Bhatt has submitted that the Tribunal has failed to appreciate pleadings of the parties and documentary as well as oral evidence adduced in the matter In the submission of learned advocate Mr. Bhatt, the Tribunal has failed to consider that the permanent disablement was caused due to the injuries received in the said accident.

Mr. Nair, on the other hand, supported the

reasonings given by the Tribunal, in toto.

8. After having gone through the R. & P. of the case and more particularly the evidence of the claimant, the following facts clearly emerge.

(i) The accident had, in fact, taken place on 27.1.1992 as the Insurance Company has not disputed the same. This is particularly in view of the fact that the respondents have not led any evidence disputing the accident.

(ii) There is no cross examination of the claimant controverting the fact of accident.

(iii) From the evidence of the claimant, it appears that he had initially taken treatment from the Bonesetter and decided not to file any complaint. However, since there was no improvement, he took treatment as an indoor patient from 4.2.1992 to 20.2.1992 and thereafter from 20.2.1992 to 26.3.1992 in Irwin Hospital, Jamnagar. During the treatment, his left leg was required to be amputed from ankle. These facts would clearly go to show that the claimant took the injury very lightly and did not anticipate serious consequences and, therefore, naturally, he filed the complaint late i.e. on 12.4.1992 against the driver of Matador. There is no dispute to the fact that the police filed chargesheet against the rickshaw driver.

(iv) The Tribunal has given too much importance to the late filing of complaint against the driver of Matador.Unfortunately, the Tribunal has not taken into consideration the aforesaid facts.

(v) The claimant has relied upon the statement of Bonesetter, statement of the wife of the complainant and the chargesheet filed against the rickshaw driver.

9. True, these statements could have been proved by examining the Investigating Officer. In the instant case, merely because the Investigating Officer is not examined, it cannot be held that the accident had not taken place and the claimant did not sustain injuries. This is particularly in view of the fact that the factum of accident having taken place is not disputed by the respondents. The Tribunal, in our opinion, has unnecessarily highlighted the fact that the claimant had not examined Investigating Officer to prove the

statements of witnesses recorded by him. Even after holding the same, the Tribunal has, in fact, in para 7 of the judgment, considered the statement of Bonesetter Pruthvisinh and observed that even after reading the statement of Bonesetter, it becomes clear that on the date of accident, the claimant had not sustained injuries as a result of which amputation was performed. Thus, the findings of the Tribunal are contradictory and have, thus, prejudiced the case of the appellant claimant.

10. Thus, taking the overall view of the matter, we do feel that the case of the appellant is not conducted in the manner it ought to have been conducted. The Tribunal has dismissed the claim petition on highly technical grounds and has failed to appreciate that the amputation of leg of the claimant was because of the accident. With a view to see to it that fair trial takes place, we are of the view that this is a fit case for remand so that the parties can lead proper evidence.

11. In the result, we allow this appeal by remanding the case to the Motor Accident Claims Tribunal, Morvi by directing the Tribunal to have a de novo trial by allowing the parties to lead appropriate evidence to establish their case. Needless to say that while deciding the same, the Tribunal will not take into consideration its earlier decision and the observations made by us in this judgment. Considering the fact that the accident had taken place in February 1992, the Tribunal shall make all endeavours to see that the case is completed preferably within six months from the date of receipt of writ of this Court. The office shall return R. & P. forthwith. No order as to costs.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)
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